

Our Ref.: MPH-500000.9846-VA-EF-C-c10

6 September 2024

CIRCULAR TO CREDITORS

IG POWER (CALLIDE) LTD ACN 082 413 885

**IG ENERGY HOLDINGS (AUSTRALIA) PTY LTD ACN 090 996 142 (FORMERLY KNOWN AS 'INTERGEN
ENERGY HOLDINGS (AUSTRALIA) PTY LTD')**

IG POWER MARKETING PTY LTD ACN 082 413 867

IG POWER HOLDINGS LIMITED ACN 082 413 876

(ALL ADMINISTRATORS APPOINTED) ("THE COMPANIES")

I refer to:

- the appointment of Ben Campbell and I, John Park, as joint and several voluntary administrators of the Companies (**Administrators**) on 27 June 2024; and
- our previous circulars to creditors.

Court Applications

The Administrators hereby give notice that on 6 September 2024 the Administrators filed two interlocutory applications with the Federal Court of Australia (**Application**), as follows:

- An application seeking orders under section 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the Insolvency Practice Schedule (Corporations) (**IPSC**), being Schedule 2 to the Corporations Act, limiting the personal liability of the Administrators in certain circumstances and other ancillary orders; and
- An application seeking judicial direction pursuant to section 90-15 of the IPSC as to the proper construction of clauses 2.12(d), 9.1, 9A, 9B of the Joint Venture Agreement dated 11 May 1998 (as amended from time to time).

Unsealed copies of both Applications are **enclosed**.

FTI Consulting (Australia) Pty Limited

ABN 49 160 397 811 | ACN 160 397 811 | AFSL Authorised Representative # 001269325

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Liability limited by a scheme approved under Professional Standards Legislation.

Both Applications are listed to be heard on 10 September 2024 before the Honourable Justice Derrington at 10:00am AEST. The hearings will take place at:

Federal Court of Australia
Harry Gibbs Commonwealth Law Courts Building
119 North Quay
Brisbane QLD 4000

Parties interested in attending should review the Federal Court daily court list for confirmation of details of the Court in which the Application is to be heard.

Investigations

For the purposes of section 596E of the *Corporations Act 2001* (Cth), I hereby give notice that dates have been fixed for the examination of the persons listed in the table below in respect of summonses for examination ordered by the Federal Court of Australia upon the application of the Administrators.

Examinee	Time and date of hearing
David Vickers	9:30am on 12 September 2024
Trent Agostini	9:30am on 12 September 2024
Masoud Abshar	9:30am on 12 September 2024
Roger Jones	9:30am on 12 September 2024
Matt Russell	9:30am on 12 September 2024
Darren Kendrick	9:30am on 13 September 2024
Bill Hopsick	9:30am on 13 September 2024

The examinations are scheduled to take place at:

Federal Court of Australia
Level 6, Harry Gibbs Commonwealth Law Courts Building
119 North Quay
Brisbane QLD 4000

Parties interested in attending should review the Federal Court daily court list for confirmation of details of the Court in which the examination is to take place.

If you have any queries, please do not hesitate to contact our office via email at IGGroup@fticonsulting.com or telephone on (07) 3225 4900.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Park', with a stylized, cursive script.

John Park

Administrator

Form 3

Interlocutory process
(rules 2.2, 15A.4, 15A.8 and 15A.9)

No. QUD403 of 2024

Federal Court of Australia
District Registry: Queensland
Division: Commercial and Corporations

**IN THE MATTER OF IG POWER (CALLIDE) LTD (ADMINISTRATORS APPOINTED)
ACN 082 413 885 & ORS**

**JOHN RICHARD PARK AND BENJAMIN PETER CAMPBELL IN THEIR CAPACITY AS
JOINT AND SEVERAL ADMINISTRATORS OF EACH OF THE SECOND TO FIFTH
PLAINTIFFS NAMED IN SCHEDULE 1**
First Plaintiffs

AND OTHERS NAMED IN THE SCHEDULE

A. DETAILS OF APPLICATION

This application is made pursuant to section 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**), section 90-15 of the *Insolvency Practice Schedule (Corporations)* (**IPSC**), being Schedule 2 to the Corporations Act, and sections 37AF and 37AG of the *Federal Court of Australia Act 1976* (Cth).

On the facts stated in the supporting affidavit of John Richard Park affirmed 6 September 2024 (**Park Affidavit**), and adopting the terms defined above, the plaintiffs apply for the following relief:

Limitation of Administrators' personal liability – Funding Deed

1. An order pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate in relation to the Second to Fifth Plaintiffs as if section 443A(1) of the Corporations Act provides that:
 - (a) the liabilities of the First Plaintiffs (**Administrators**) incurred with respect to any obligations arising out of, or in connection with, the Funding Deed dated

Filed on behalf of (name & role of party)	First to Fifth Plaintiffs		
Prepared by (name of person/lawyer)	Timothy Sackar		
Law firm (if applicable)	White & Case LLP		
Tel	+ 61 2 8249 6601	Fax	+ 61 2 8249 2699
Email	timothy.sackar@whitecase.com		
Address for service (include state and postcode)	Level 50, Governor Phillip Tower, 1 Farrer Place Sydney NSW 2000		

20 August 2024 between the Administrators, the Fifth Plaintiff (**IGPC**) and Sev.en Global Investments a.s. (**Funding Deed**), including monies borrowed, interest incurred in respect of monies borrowed and borrowing costs, are in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of IGPC; and

- (b) notwithstanding that the liabilities in subparagraph 1(a) are debts or liabilities incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of IGPC, the Administrators will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of IGPC are insufficient to satisfy the debts and liabilities incurred by the Administrators arising out of, or in connection with, the Funding Deed.

Limitation of Administrators' personal liability – Market Trader Agreement

- 2. An order pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate in relation to the Second to Fifth Plaintiffs as if section 443A(1) of the Corporations Act provides that:

- (a) the liabilities of the Administrators incurred with respect to any obligations, arising out of, or in connection with, the **Market Trader Agreement** dated 11 May 1998 between Callide Power Trading Pty Limited and IGPC, including:
 - (i) cash calls issued by Callide Power Trading Pty Limited;
 - (ii) any associated interest;
 - (iii) any amounts on account of tax, including but not limited to, goods and services tax; and
 - (iv) any associated costs,

are in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of IGPC; and

- (b) notwithstanding that the liabilities in subparagraph 2(a) herein are debts or liabilities incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of IGPC, the Administrators

will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of IGPC are insufficient to satisfy the debts and liabilities arising out of, or in connection with, the Market Trader Agreement.

Limitation of Administrators' personal liability – Connection Agreement

3. An order pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate in relation to the Administrators and the Second to Fifth Plaintiffs as if section 443A(1) of the Corporations Act provides that:
 - (a) the liabilities of the Administrators incurred with respect to any obligations, arising out of, or in connection with, the **Connection Agreement** (For Connection to a Transmission Network) between Queensland Electricity Transmission Corporation limited (ACN 078 849 233) trading as Powerlink Queensland (**Powerlink**), Callide Energy Pty Ltd (ACN 082 468 746) and IGPC, including for any amounts payable to Powerlink for the supply of electricity, are in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of IGPC; and
 - (b) notwithstanding that the liabilities in subparagraph 3(a) are debts or liabilities incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of IGPC, the Administrators will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of IGPC are insufficient to satisfy the debts and liabilities arising out of, or in connection with, the Connection Agreement.

Suppression or non-publication order in relation to Funding Deed and Market Trader Agreement and Connection Agreement

4. Until the conclusion of the external administration of the Second to Fifth Plaintiffs, or further order of the Court, pursuant to section 37AF of the *Federal Court of Australia Act 1976* (Cth), on the ground stated in section 37AG(1)(a), being that the order is necessary to prevent prejudice to the proper administration of justice:
 - (a) Confidential Exhibit JRP-1 to the affidavit of John Richard Park affirmed 6 September 2024; and

- (b) the written submissions relied upon by the Plaintiffs on this application to the extent they refer to the content of Confidential Exhibit JRP-1,

be kept confidential and not be provided or disclosed to any person other than:

- (c) any Judge of this Court, and that Judge's staff and assistants;
- (d) the Plaintiffs and their legal representatives; and
- (e) Seven Global Investments a.s. and its legal representatives.

5. Until the conclusion of the external administration of the Second to Fifth Plaintiffs, or further order of the Court, pursuant to section 37AF of the *Federal Court of Australia Act 1976* (Cth), on the ground stated in section 37AG(1)(a), being that the order is necessary to prevent prejudice to the proper administration of justice:

- (a) Confidential Exhibit JRP-2 to the affidavit of John Richard Park affirmed 6 September 2024; and
- (b) the written submissions relied upon by the Plaintiffs on this application to the extent they refer to the content of Confidential Exhibit JRP-2,

be kept confidential and are not to be provided or disclosed to any person other than:

- (c) any Judge of this Court, and that Judge's staff and assistants; and
- (d) the Plaintiffs and their legal representatives.

Other orders

6. An order that the Administrators have liberty to apply on 1 business days' notice, specifying the relief sought.
7. The Plaintiffs' costs of and incidental to this application are to be treated as costs in the administration of IGPC and be paid out of the assets of IGPC.
8. Any further or other order as the Court thinks fit.

Date: 6 September 2024


.....
Timothy James Sackar
Plaintiffs' legal practitioner

This application will be heard by at the Federal Court of Australia, Harry Gibbs Commonwealth Law Courts Building, 119 North Quay, Brisbane QLD 4000 at *am/*pm on

B. NOTICE TO RESPONDENT(S) (IF ANY)

Not applicable.

C. FILING

This interlocutory process is filed by White & Case, solicitors for the Plaintiffs.

D. SERVICE

The applicant's address for service is White & Case, Level 50 Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000.

It is not intended to serve a copy of this interlocutory process on any person but it is intended that notice be given to creditors, the Commonwealth of Australia and the Australian Securities and Investments Commission.

SCHEDULE 1

No. QUD403 of 2024

Federal Court of Australia
District Registry: Queensland
Division: General (Commercial and Corporations)

IN THE MATTER OF IG POWER (CALLIDE) LIMITED (ADMINISTRATORS APPOINTED) ACN 082 413 885 & ORS

Plaintiffs

First Plaintiff:	John Richard Park and Benjamin Peter Campbell in their capacity as joint and several administrators of each of the Second to Fifth Plaintiffs
Second Plaintiff:	IG Energy Holdings (Australia) Pty Ltd ACN 090 996 142 (Administrators Appointed)
Third Plaintiff:	IG Power Holdings Limited ACN 082 413 876 (Administrators Appointed)
Fourth Plaintiff:	IG Power Marketing Pty Ltd ACN 082 413 867 (Administrators Appointed)
Fifth Plaintiff:	IG Power (Callide) Ltd ACN 082 413 885 (Administrators Appointed)

Form 59
Rule 29.02(1)

Affidavit

No. QUD403 of 2024

Federal Court of Australia
District Registry: Queensland
Division: General (Commercial and Corporations)

**IN THE MATTER OF IG POWER (CALLIDE) LTD (ADMINISTRATORS APPOINTED) ACN
082 413 885 & ORS**

**JOHN RICHARD PARK AND BENJAMIN PETER CAMPBELL IN THEIR CAPACITY AS
JOINT AND SEVERAL ADMINISTRATORS OF EACH OF THE SECOND TO FIFTH
PLAINTIFFS NAMED IN SCHEDULE 1**

First Plaintiffs

AND OTHERS NAMED IN SCHEDULE 1

Plaintiffs

Affidavit of: **John Richard Park**
Address: Level 20, CP1, 345 Queen Street, Brisbane QLD 4000
Occupation: Senior Managing Director of FTI Consulting and Registered Liquidator
Date: 6 September 2024

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1	Affidavit of John Richard Park affirmed on 6 September 2024	1 – 51	1 - 14
2	Confidential Exhibit JRP-1		15 - 33

Filed on behalf of (name & role of party) John Richard Park and Benjamin Peter Campbell in their capacity as Administrators of each of the Second to Fifth Plaintiffs listed in the Schedule
Prepared by (name of person/lawyer) Timothy Sackar
Law firm (if applicable) White & Case LLP
Tel + 61 2 8243 6601 Fax + 61 2 8249 2699
Email timothy.sackar@whitecase.com
Address for service Level 50, Governor Phillip Tower, 1 Farrer Place Sydney NSW 2000
(include state and postcode)



Document number	Details	Paragraph	Page
3	Confidential Exhibit JRP-2		34 - 173
4	Exhibit JRP-3		174 – 351

I, John Richard Park, of Level 20, CP1, 345 Queen Street, Brisbane QLD 4000, Senior Managing Director of FTI Consulting, affirm:

Introduction

1. I am one of the two joint and several administrators appointed to each of the Second to Fifth Plaintiffs (together, the **Companies** or the **Group**), together with my colleague, Benjamin Peter Campbell (together, the **Administrators** and each an **Administrator**). Mr Campbell is also a Senior Managing Director of FTI Consulting.
2. I am authorised by Mr Campbell to make this affidavit on behalf of the Administrators. Where I depose below to the view or views of the Administrators, they are the view(s) which I and Mr Campbell hold in that capacity at the date of affirming this affidavit.
3. Exhibited to me at the time of affirming this affidavit are bundles of documents labelled "**Confidential Exhibit JRP-1**", "**Confidential Exhibit JRP-2**" and "**Exhibit JRP-3**".
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at FTI Consulting have obtained through my role as special purpose administrator of the Fifth Plaintiff (**IGPC**), and as an Administrator of each of the Companies (in the exercise of those respective appointments). The matters contained in this affidavit are true and correct to the best of my knowledge and belief.
5. In making this affidavit, I do not intend and have no authority to waive an entitlement to claim privilege in any communication or record of communication, that is the subject of privilege. Nothing in this affidavit should be construed as constituting a waiver of privilege.

Purpose of Affidavit

6. I make this affidavit in support of the relief sought by the Plaintiffs in the Interlocutory Process filed in this proceeding on 5 September 2024 (**Interlocutory Process**), namely, orders under section 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)* being Schedule 2 to the

Corporations Act (**IPSC**). Those orders seek to limit the personal liability of the Administrators with respect to liabilities incurred by the Administrators in connection with the following agreements as they apply as at the date of the application:

- a. the Funding Deed dated 20 August 2024 between the Administrators, IGPC and Sev.en Global Investments a.s. (**Sev.en GI**) (**Funding Deed**). A copy of the Funding Deed commences at page 16 of **Confidential Exhibit JPR-1**;
- b. the Market Trader Agreement dated 11 May 1998 between Callide Power Trading Pty Limited (**CPT**) and IGPC (**Market Trader Agreement**). A copy of the Market Trader Agreement commences at page 35 of **Confidential Exhibit JRP-2**; and
- c. the Connection Agreement (For Connection to a Transmission Network) between Queensland Electricity Transmission Corporation limited (ACN 078 849 233) trading as Powerlink Queensland (**Powerlink**), Callide Energy Pty Ltd (ACN 082 468 746) (**CEPL**) and IGPC (**Connection Agreement**). A copy of the Connection Agreement commences at page 78 of **Confidential Exhibit JRP-2**.

Work undertaken to date since the Administrators' appointment

7. I refer to paragraphs 14 to 27 of the Affidavit of Benjamin Peter Campbell affirmed on 19 July 2024 and filed in this proceeding, which detailed the work that the Administrators had undertaken from the Administrators' appointment on 27 June 2024 (**Administrators' Appointment Date**) to 19 July 2024.
8. Since 19 July 2024, the Administrators have continued to undertake a variety of tasks in relation to the Companies, including:
 - a. engaging Houlihan Lokey to run a market testing campaign seeking proposals for: (1) funding the administration; and (2) a sale or recapitalisation of the Companies and/or IGPC's interest in the Callide C Power Station (**Sale Process**). The Sale Process resulted in proposals being made to fund the administration (which ultimately culminated in the Administrators signing the Funding Deed with Sev.en GI) and has resulted in non-binding indicative offers being received in relation to a sale and/or recapitalisation of all or part of the Group;



- b. continuing to engage with key stakeholders relevant to the unincorporated joint venture between IGPC and CEPL, including CEPL, CS Energy Limited, Callide Power Management Pty Ltd (**CPM**) and CPT;
- c. continuing to meet the liabilities of the Companies, including paying invoices issued by Powerlink, cash calls issued by CPM under the Joint Venture Agreement dated 11 May 1998 (as amended from time to time) (**JVA**) and by CPT under the Market Trader Agreement. A copy of the JVA commences at page 174 of **Exhibit JRP-3**;
- d. in relation to our investigations in respect of the **Incidents** (as described in the 29 January Orders) (**Investigations**), continuing the work we commenced in our capacity as special purpose administrators, including summoning various individuals for public examination who may have knowledge of, or will be able to give information about, the Incidents. Those public examinations commenced on 14 August 2024 (with the public examination of Dr Sean Brady) and are ongoing. The Administrators have also issued a number of document production requests on various parties whom the Administrators understand have knowledge of, or will be able to give information about, the Incidents; and
- e. working with all relevant stakeholders to ensure that Units C3 and C4 at the Callide Power Station returned to service. As at the date of affirming this affidavit, both Units C3 and C4 are operational, albeit Unit C4 is operating in a restricted capacity while it undergoes certain restart testing and approvals.

Limitation of administrators' personal liability pursuant to funding agreement

9. As at the Administrators' Appointment Date, it was apparent to the Administrators that the Companies held insufficient funds to meet the ongoing liabilities anticipated to be incurred through the operation of the Companies, and the costs of the administrations. Immediately prior to entering into the Funding Deed, the Administrators were in control of approximately \$35.4 million held as follows:
- a. approximately \$30.6 million in cash held in a bank account in the name of IGPC;
 - b. approximately \$500,000 in cash held in a bank account in the name of the Second Plaintiff; and
 - c. approximately \$4.3 million in cash held in a bank account in the name of the Fourth Plaintiff.




10. As noted in paragraph 30 of Mr Campbell's affidavit of 19 July 2024, prior to entering into the Funding Deed, and without the funding provided, the Administrators estimated that the cash at bank would have been exhausted by late August 2024.
11. Accordingly, the Administrators formed the view that it was necessary to obtain urgent additional funding to enable us to meet the costs of the administration of the Companies and other costs associated with the business of the Companies (**Business**). As noted above, Houlihan Lokey was mandated to seek funding proposals and those proposals were received on 9 August 2024. After liaising with the various bidders and assessing these proposals with Houlihan Lokey and our legal advisers, the Administrators formed the view that the superior proposal was that advanced by Sev.en GI.
12. On 20 August 2024 the Administrators, IGPC and Sev.en GI entered into the Funding Deed. A copy of the executed Funding Deed appears at pages 16 to 33 of Confidential Exhibit JRP-1. The Administrators seek a suppression or non-publication order in relation to the Funding Deed, as discussed further below.
13. The amount of funds advanced under the Funding Deed are, in the Administrators view, necessary to meet the following costs of the administration until the end of the convening period on 31 October 2024 (**Convening Period**) (which, as indicated above, includes the Investigations):
 - a. the Administrators' remuneration and expenses (including those of their staff and any insurances);
 - b. the fees and disbursements of our legal advisors, sale adviser and experts; and
 - c. the total costs of operating the Business, including the cash calls issued under the JVA and Market Trader Agreement, and the invoices issued under the Connection Agreement.

together, the **Administration Costs**.

14. In particular, the cash calls recently issued under the Market Trader Agreement and the Invoices issued under the Connection Agreement, are set out at paragraphs 28 to 31 and 39 and 40 below. In relation to the JVA, I refer to paragraph 39 of the Affidavit of Benjamin Peter Campbell affirmed on 19 July 2024 and filed in this proceeding. In that paragraph it was estimated that IGPC would be liable for approximately \$74.1 million in cash calls over the few months following that affidavit. I estimate that cash




calls under the JVA between now and the end of the Convening Period will be approximately \$58.5 million and the other costs of operating the Business will be approximately \$5 million.

15. In determining the Administration Costs, the Administrators considered the amount required to continue trading the Business until the end of the Convening Period and included a 20% contingency amount in case of any variances in the forecasting of the costs of trading the Business.
16. The Administrators have been conscious that the cash held by IGPC prior to entry into the Funding Deed is subject to a security interest in favour of CEPL. While CEPL has not indicated that the Administrators are not to use these funds, the Administrators have not received express authority from CEPL to use these funds to meet Administration Costs and accordingly are not certain that they can utilise these funds to meet the ongoing costs of the Business. Therefore, out of an abundance of caution, the Administrators have quarantined these funds.

Orders sought

17. The Administrators seek that it be made clear that the liabilities of the Administrators incurred in connection with the Funding Deed be considered in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of IGPC.
18. I am aware that, pursuant to section 443D of the Corporations Act, the Administrators will be entitled to be indemnified out of the Companies' property for debts which the Administrators are personally liable and that the Administrators have a statutory lien over the property of the Companies to secure the right of indemnity. However, the Administrators are of the view that without the relief sought to limit the Administrators' personal liability for funds which we in our capacity as Administrators of IGPC borrow from Sev.en GI, we may be exposed to meeting these obligations personally in the event of any shortfall between the available property of IGPC and the amounts payable in respect of the Funding Deed (and any amendments to that document).
19. We consider that entering into the Funding Deed is in the best interests of, and will not cause prejudice to, the creditors of the Companies because:
 - a. entering into the Funding Deed has ensured that the Administrators have adequate funding to operate the Business, meet ongoing liabilities of IGPC




and seek to finalise the sales process and resolve the administration by the end of the Convening Period;

- b. entering into the Funding Deed has enabled us to continue the Investigations, with a view to identifying claims available to IGPC by the end of the Convening Period. These claims have the potential to increase the return to creditors and possibly members, and the Administrators are of the view that a thorough report on the outcome of the Investigations is vital to informing creditors as to the potential outcomes available to them at the conclusion of the administration;
 - c. entering into the Funding Deed has enabled us to continue trading the Companies during the administration, which would not otherwise have been possible;
 - d. continuing the Business as a going concern maximises the chances of achieving a recapitalisation and/or sale outcome which may result in a superior return for creditors than compared with a liquidation scenario; and
 - e. accordingly, we consider it is in creditors' best interests for the Administrators to trade the Business while we explore a possible sale or recapitalisation of the Companies and finalise our Investigations.
20. We do not consider that unsecured creditors of the Companies are prejudiced by us entering into the Funding Deed and drawing down funds available, or by the making of orders limiting our personal liability to our right of indemnity. As set out above, that is essentially because, in the absence of funding, the Investigations could not be progressed, the Sale Process could not complete, and the Companies would cease to trade and would need to be wound down due to the cash deficiency. This would in effect, reduce the cash pool available to creditors.

Suppression or non-publication order in relation to Funding Deed

21. The Administrators seek orders that Confidential Exhibit JRP-1, being the Funding Deed, be treated as confidential, so as to prevent prejudice to the proper administration of justice. The Funding Deed contains commercially and market sensitive information pertaining to IGPC and Sev.en GI which is not currently in the public domain and not otherwise publicly available. In particular, following a competitive and confidential market process to obtain funding, the Administrators have agreed, pursuant to the Funding Deed, to keep certain information contained in




the Funding Deed confidential, as detailed in clause 12.3 of the Funding Deed. The Administrators are of the view that entering into the Funding Deed is in the best interests of creditors, and accordingly seek this order to allow the Administrators to continue to meet their contractual obligations under the Funding Deed, and with a view to give material effect to the confidentiality provisions under the Funding Deed for the benefit of the Administrators, IGPC and Sev.en.

22. In addition, the funding provided under the Funding Deed has been provided to ensure that the Administrators can meet the Administration Costs up until the end of the Convening Period. In the event that the Convening Period needed to be extended (which is not envisaged at the time of affirming this affidavit), the Administrators would conduct a further competitive and confidential market process to obtain further funding. In these circumstances, it is important that the terms of the Funding Deed remain confidential to preserve any future confidential market process, should further funding ultimately be required.
23. Accordingly, the Administrators are of the view that it is in the best interests of creditors, and necessary to prevent prejudice to the proper administration of justice, that Confidential Exhibit JRP-1 not be disclosed other than to Sev.en GI, the Administrators, or the Court.

Limitation of Administrators' personal liability – Market Trader Agreement and Connection Agreement

Order 3 – Market Trader Agreement

24. Pursuant to the Market Trader Agreement, CPT is appointed as the exclusive agent for the sale of the IGPC's share of electricity produced at the Callide C Power Station. The agreement commenced on the 11 May 1998 and continues until the earlier of the date on which IGPC ceases to be entitled to an undivided share of electricity produced or the date of termination of the JVA (the initial term of which comes to an end on 11 May 2028).
25. A copy of the Market Trader Agreement appears at pages 35 to 77 of Confidential Exhibit JRP-2.
26. Pursuant to clause 7.1 of the Market Trader Agreement, IGPC is liable to reimburse CPT (as is CEPL, in equal halves) for its expenses incurred in performing its duties under the Market Trader Agreement in accordance with the Accounting Procedures set out in Schedule 3 of the Market Trader Agreement. As detailed in section 4 of




Schedule 3 of the Market Trader Agreement, CPT is obliged to issue monthly cash calls to IGPC and CEPL for the amounts that are expected to be paid during the following month (**Market Trader Cash Calls**) together with a reconciliation of current cash balances held by CPT. At the same time, CPT must provide a forecast of cash requirements, analysed monthly for the balance of any budget period, which forecasts are expressly non-binding. CPT also prepares annual programmes and budgets for each accounting year, which must be submitted by no later than 31 October or 31 March of each year for approval by IGPC and CEPL. If an approved budget becomes inadequate, there is a mechanism under the Market Trader Agreement that allows CPT to request approval from IGPC and CEPL for increased expenditure.

27. Since the Administrators' Appointment Date, the Administrators have been unable to obtain precise forecasting from CPT in relation to upcoming Market Trader Cash Calls. This is in part due to the fact that the Market Trader Cash Calls are referable to the operation of Units C3 and C4 at the Callide Power Station. For example, in respect of the period when both Units C3 and C4 were not operating (being the period 26 July 2024 to 23 August 2024), the corresponding Market Trader Cash Call was significantly higher than the Market Trader Cash Call for the period prior to that (as detailed further below).
28. On 16 July 2024 CPT issued to IGPC a Market Trader Cash Call to the Fifth Plaintiff (**July Cash Call**). A copy of the July Cash Call appears at pages 165 to 168 of Confidential Exhibit JRP-2.
29. The Administrators caused IGPC to pay the July Cash Call on 22 July 2024.
30. On 8 August 2024 CPT issued a further Market Trader Cash Call to IGPC (**August Cash Call**). A copy of the August Cash Call appears at pages 169 to 170 of Confidential Exhibit JRP-2.
31. The Administrators caused IGPC to pay the August Cash Call on 12 August 2024.
32. As the Administrators do not have a clear line of sight on the amount of upcoming Market Trader Cash Calls, the Administrators are seeking orders that their liability in respect of the payment of these cash calls is limited to the property of IGPC available to discharge such debts.
33. In addition, as the Market Trader Agreement predates the implementation of the goods and services tax (**GST**) legislation in Australia, there are no express provisions




contained within it governing the payment of GST. The Administrators are liaising with CPT and the parties to the JVA, and are otherwise considering, who is liable to remit to the Australian Taxation Office an amount in respect of GST on electricity supplied by CPT (acting as agent for IGPC) to the Australian Energy Market Operator under the Market Trader Agreement.

34. I refer to paragraph 38(c) of the Affidavit of Benjamin Peter Campbell affirmed on 19 July 2024 and filed in this proceeding. As noted in that paragraph, CEPL has enforced its security under the Joint Venture Deed of Cross-Charge between IGPC, CEPL and CPM dated 11 May 1998 (as amended from time to time) (**Cross-Charge**), by directing CPT to pay to CPM all moneys due and payable to or for the account of IGPC under the Market Trader Agreement. This “cash sweep” operates as an assignment and transfer of the whole of IGPC’s right, title and interest in and to the Market Trader Agreement and all money due, owing or payable or to become due, owing or payable whether actually or contingently to IGPC under the Market Trader Agreement, and has been taking place since the Administrators’ Appointment Date. Accordingly, no revenue is being received by IGPC under the Market Trader Agreement (or otherwise).
35. As the “cash sweep” operates as an assignment, as distinct from a novation, there is question as to whether the obligation to remit GST on electricity supplied, falls on IGPC. In the circumstances, and given that IGPC is not receiving any revenue, the Administrators are seeking orders that their liability in respect of GST that arises in respect of electricity supplied pursuant to the terms of the Market Trader Agreement is limited to the property of IGPC available to discharge such debts.

Order 4 – Connection Agreement

36. Pursuant to the Connection Agreement, Powerlink provides IGPC and CEPL with electricity connection services and revenue metering installation services relating to the connection of the Callide C Power Station to the Powerlink electricity transmission network. A copy of the Connection Agreement appears at pages 78 to 164 of Confidential Exhibit JRP-2.
37. The Connection Agreement will terminate on the later of 31 January 2031 and the end of the ‘Subsequent Period’, the meaning of which is set out at page 33 of the Connection Agreement, at page 115 of Confidential Exhibit JRP-2.
38. Pursuant to clause 1.5, each of IGPC and CEPL is severally liable for the performance of all financial obligations under the Connection Agreement to the



extent of their respective project percentages. For IGPC, this is 50 (fifty) percent (as defined in Schedule 1 of the Connection Agreement).

39. Since the Administrators' Appointment Date, in relation to the IGPC's obligations under the Connection Agreement, Powerlink has issued three invoices to IGPC (**Powerlink Invoices**). Copies of the Powerlink Invoices appear at pages 171 to 173 of Confidential Exhibit JRP-2. The Powerlink Invoices relate to monthly "connection charges" and other charges payable under cl 11 of the Connection Agreement.
40. In relation to the Powerlink Invoices:
 - a. the Powerlink Invoice issued on 2 July 2024 related in part to a period prior to the Administrators' Appointment Date. Accordingly, on 29 July 2024, the Administrators paid that portion of the Powerlink Invoice that related to the period following the Administrators' Appointment Date (the balance was paid by the former administrators);
 - b. the Powerlink Invoice issued on 5 August 2024 was paid on 29 August 2024; and
 - c. the Administrators intend to pay the Powerlink Invoice issued on 4 September 2024 by its due date of 2 October 2024.
41. The Administrators have formed the view that preserving the Connection Agreement is in the best interests of the creditors and is required for ongoing operation of the Business.

Orders sought

42. The Administrators seek that it be made clear that the liabilities of the Administrators incurred in connection with the Market Trader Agreement and Connection Agreement be considered in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of the Companies.
43. As stated above at paragraph 18, I am aware that, pursuant to section 443D of the Corporations Act, the Administrators will be entitled to be indemnified out of the Companies' assets for debts for which the Administrators are personally liable and that the Administrators have a lien over the assets of the Companies to secure the right of indemnity. However, the Administrators are of the view that without the relief sought to limit the Administrators' personal liability for amounts that are incurred under or in respect of the Market Trader and Connection Agreements, we may be

exposed to meeting these obligations in the event of any shortfall between the available property of IGPC and the amounts payable.

44. As set out at paragraph 13, the amount of funding advanced under the Funding Deed has been determined to meet the Administration Costs until the end of the Convening Period. While it is the Administrators intention to continue to meet the Administration Costs as forecasted, to the extent that any outliers occur, any forecast is inaccurate or any additional significant costs are incurred, the Administrators may be personally exposed to meeting obligations in the event of any shortfall between the funds advanced by Seven GI under the Funding Deed and the ongoing costs incurred under the Market Trader and Connection Agreements.
45. The Administrators are of the view that it is of paramount importance in this administration to continue the Investigations and continue to trade the Business. The Administrators' current view is that we cannot continue to operate the Business without our personal liability being limited in accordance with the orders being sought. Accordingly, the Administrators are seeking these orders to protect the Administrators from personal liability by, in effect extending the protection granted to the Administrators by the orders made by this Honourable Court on 23 July 2024.

Suppression or non-publication order in relation to Market Trader Agreement and Connection Agreement

46. The Administrators seek orders that Confidential Exhibit JRP-2, being the:
 - a. Market Trader Agreement;
 - b. Market Trader Cash Calls;
 - c. Connection Agreement; and
 - d. Powerlink Invoices,
 be treated as confidential, so as to prevent prejudice to the proper administration of justice.
47. We seek these orders on the basis that the information contained in these documents is not currently in the public domain and not otherwise publicly available. The Administrators are of the view that this is relevant in preventing prejudice to the Sale Process that the Administrators continue to undertake. Potential purchasers of the Business may use the information, including the details of the agreements and

amounts payable, to inform the price they are willing to offer to purchase the Business.

Conclusion

48. The Administrators have informed Seven GI of this application and it has expressed no objection to it. We otherwise intend to provide notice of the application to creditors of the Second to Fifth Plaintiffs, including CEPL, CSE and ASIC. The Administrators do not expect any opposition to the relief sought, however will provide further evidence of any responses received prior to or at the hearing of the application.
49. The Administrators consider the orders sought in the Interlocutory Process are in the best interests of the creditors of the Second to Fifth Plaintiffs and are consistent with, and will advance, the objectives of Part 5.3A of the Corporations Act.
50. The Administrators respectfully ask the Court to make the orders sought in the Interlocutory Process.

Declaration

51. I believe the contents of this affidavit to be true and correct.

Affirmed by the deponent
at Brisbane
in Queensland
on 6 September 2024
Before me:

)
)
)
)
)

Signature of deponent

Signature of witness

Name of Witness: Ashleigh Ubank
Capacity of Witness: JP (Qual)
Address of Witness: Level 20, 345 Queen Street, Brisbane QLD 4000



SCHEDULE 1

No. QUD403 of 2024

Federal Court of Australia
District Registry: Queensland
Division: General (Commercial and Corporations)

**IN THE MATTER OF IG POWER (CALLIDE) LIMITED (ADMINISTRATORS APPOINTED)
ACN 082 413 885 & ORS**

Plaintiffs

First Plaintiff:	John Richard Park and Benjamin Peter Campbell in their capacity as joint and several administrators of each of the Second to Fifth Plaintiffs
Second Plaintiff:	IG Energy Holdings (Australia) Pty Ltd ACN 090 996 142 (Administrators Appointed)
Third Plaintiff:	IG Power Holdings Limited Pty Ltd ACN 082 413 876 (Administrators Appointed)
Fourth Plaintiff:	IG Power Marketing Pty Ltd ACN 082 413 867 (Administrators Appointed)
Fifth Plaintiff:	IG Power (Callide) Ltd ACN 082 413 885 (Administrators Appointed)

Form 3

Interlocutory process
(rules 2.2, 15A.4, 15A.8 and 15A.9)

No. QUD403 of 2024

Federal Court of Australia
District Registry: Queensland
Division: Commercial and Corporations

**IN THE MATTER OF IG POWER (CALLIDE) LTD (ADMINISTRATORS APPOINTED)
ACN 082 413 885 & ORS**

**JOHN RICHARD PARK AND BENJAMIN PETER CAMPBELL IN THEIR CAPACITY AS
JOINT AND SEVERAL ADMINISTRATORS OF EACH OF THE SECOND TO FIFTH
PLAINTIFFS NAMED IN SCHEDULE 1**
First Plaintiffs

AND OTHERS NAMED IN THE SCHEDULE

A. DETAILS OF APPLICATION

This application is made pursuant to section 90-15 of the *Insolvency Practice Schedule (Corporations) (IPSC)*, being Schedule 2 to the *Corporations Act 2001* (Cth).

On the facts stated in the supporting affidavit of John Richard Park affirmed 6 September 2024 (**Park Affidavit**), and adopting the terms defined above, the Plaintiffs apply for the following relief.

Judicial Direction

1. A direction that the First Plaintiffs (**Administrators**) in their capacity as joint and several administrators of the Second to Fifth Plaintiffs (**IG Power Group**) are justified in conducting the administrations of the companies within the IG Power Group on the basis that a sale of shares in:
 - (a) IG Power Holdings Limited (Administrators Appointed) (by IG Energy Holdings (Australia) Pty Ltd (Administrators Appointed)); or
 - (b) IG Power (Callide) Ltd (Administrators Appointed) (by IG Power Holdings Limited (Administrators Appointed)),

whether by way of a deed of company arrangement or otherwise, does not engage any obligation of any IG Power Group entity under clauses 9.1, 9A or 9B of the Joint Venture Agreement dated 11 May 1998 (as amended from time to time), or

Filed on behalf of (name & role of party)	First to Fifth Plaintiffs
Prepared by (name of person/lawyer)	Timothy Sackar
Law firm (if applicable)	White & Case LLP
Tel + 61 2 8249 6601	Fax + 61 2 8249 2699
Email	timothy.sackar@whitecase.com
Address for service (include state and postcode)	Level 50, Governor Phillip Tower, 1 Farrer Place Sydney NSW 2000

constitute a breach by any entity within the IG Power Group of those clauses or clause 2.12(d) of the JVA.

Other Orders

2. Any person who can demonstrate a sufficient interest to discharge or modify these orders has liberty to apply on 3 business days' written notice to the Plaintiffs and the Court.
3. An order that the Administrators have liberty to apply on 1 business days' notice, specifying the relief sought.
4. The Plaintiffs' costs of and incidental to this application are to be treated as costs in the administration of the Second to Fifth Plaintiffs and be paid out of the assets of the Second to Fifth Plaintiffs.
5. Any further or other order as the Court thinks fit.

Date: 6 September 2024


.....
Timothy James Sackar
Plaintiffs' legal practitioner

This application will be heard by at the Federal Court of Australia, Harry Gibbs Commonwealth Law Courts, Building 119 North Quay, Brisbane QLD 4000 at *am/*pm on

B. NOTICE TO RESPONDENT(S) (IF ANY)

Not applicable.

C. FILING

This interlocutory process is filed by White & Case, solicitors for the Plaintiffs.

D. SERVICE

The applicant's address for service is White & Case, Level 50 Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000.

It is not intended to serve a copy of this interlocutory process on any person but it is intended that notice be given to creditors, the Commonwealth of Australia and the Australian Securities and Investments Commission.

SCHEDULE 1

No. QUD403 of 2024

Federal Court of Australia

District Registry: Queensland

Division: General (Commercial and Corporations)

**IN THE MATTER OF IG POWER (CALLIDE) LIMITED (ADMINISTRATORS APPOINTED)
ACN 082 413 885 & ORS**

Plaintiffs

- | | |
|-------------------|---|
| First Plaintiff: | John Richard Park and Benjamin Peter Campbell in their capacity as joint and several administrators of each of the Second to Fifth Plaintiffs |
| Second Plaintiff: | IG Energy Holdings (Australia) Pty Ltd ACN 090 996 142
(Administrators Appointed) |
| Third Plaintiff: | IG Power Holdings Limited ACN 082 413 876
(Administrators Appointed) |
| Fourth Plaintiff: | IG Power Marketing Pty Ltd ACN 082 413 867
(Administrators Appointed) |
| Fifth Plaintiff: | IG Power (Callide) Ltd ACN 082 413 885 (Administrators Appointed) |

Form 59
Rule 29.02(1)

Affidavit

No. QUD403 of 2024

Federal Court of Australia
District Registry: Queensland
Division: General (Commercial and Corporations)

**IN THE MATTER OF IG POWER (CALLIDE) LTD (ADMINISTRATORS APPOINTED) ACN
082 413 885 & ORS**

**JOHN RICHARD PARK AND BENJAMIN PETER CAMPBELL IN THEIR CAPACITY AS
JOINT AND SEVERAL ADMINISTRATORS OF EACH OF THE SECOND TO FIFTH
PLAINTIFFS NAMED IN SCHEDULE 1**
First Plaintiffs

AND OTHERS NAMED IN SCHEDULE 1
Plaintiffs

Affidavit of: **John Richard Park**
Address: Level 20, CP1, 345 Queen Street, Brisbane QLD 4000
Occupation: Senior Managing Director of FTI Consulting and Registered Liquidator
Date: 6 September 2024

Contents

Document number	Details	Paragraph	Page
1	Affidavit of John Richard Park affirmed on 6 September 2024	1 - 16	1 - 7
2	Exhibit JRP-4		8 - 42

Filed on behalf of (name & role of party)	John Richard Park and Benjamin Peter Campbell in their capacity as Administrators of each of the Second to Fifth Plaintiffs listed in the Schedule		
Prepared by (name of person/lawyer)	Timothy Sackar		
Law firm (if applicable)	White & Case LLP		
Tel	+ 61 2 8243 6601	Fax	+ 61 2 8249 2699
Email	timothy.sackar@whitecase.com		
Address for service (include state and postcode)	Level 50, Governor Phillip Tower, 1 Farrer Place Sydney NSW 2000		



I, John Richard Park, of Level 20, CP1, 345 Queen Street, Brisbane QLD 4000, Senior Managing Director of FTI Consulting, affirm:

Introduction

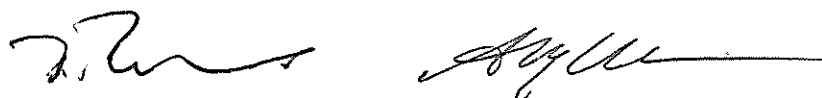
1. I am one of the two joint and several administrators appointed to each of the Second to Fifth Plaintiffs (together, the **Companies** or the **Group**), together with my colleague, Benjamin Peter Campbell (together, the **Administrators** and each an **Administrator**). Mr Campbell is also a Senior Managing Director of FTI Consulting.
2. I am authorised by Mr Campbell to make this affidavit on behalf of the Administrators. Where I depose below to the view or views of the Administrators, they are the view(s) which I and Mr Campbell hold at the date of affirming this affidavit.
3. This is the second affidavit I have affirmed in relation to this proceeding. My first affidavit was affirmed on 6 September 2024 (**First Affidavit**).
4. Exhibited to me at the time of affirming this affidavit is a bundle of documents labelled "**Exhibit JRP-4**".
5. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at FTI Consulting have obtained through my role as special purpose administrator of the Fifth Plaintiff (**IGPC**), and as an Administrator of each of the Companies (in the exercise of those respective appointments). The matters contained in this affidavit are true and correct to the best of my knowledge and belief.
6. In making this affidavit, I do not intend and have no authority to waive an entitlement to claim privilege in any communication or record of communication, that is the subject of privilege. Nothing in this affidavit should be construed as constituting a waiver of privilege.

Purpose of Affidavit

7. I make this affidavit in support of the relief sought by the Plaintiffs in the Interlocutory Process filed in these proceedings on 6 September 2024 (**Interlocutory Process**), namely, judicial direction pursuant to section 90-15 of the *Insolvency Practice Schedule (Corporations)* being Schedule 2 to the *Corporations Act 2001* (Cth) (**IPSC**) as to the proper construction of clauses 2.12(d), 9.1, 9A and 9B of the Joint Venture Agreement between IGPC and Callide Energy Pty Ltd (**CEPL**) dated 11 May 1998 (as amended from time to time) (**Joint Venture Agreement**). A copy of the Joint Venture Agreement and its various amending documents appears at pages 174 to 350 of Exhibit JRP-3 to my First Affidavit.

Direction Sought

8. I refer to paragraph 8(a) of my First Affidavit in relation to a sale process that is being conducted by the Administrators and our appointed sale advisor, Houlihan Lokey (**Sale Process**).
9. As part of the Sale Process, non-binding indicative offers (**NBIOs**) for a sale or recapitalisation of the Companies and/or IGPC's interest in the Callide C Power Station were required to be made by interested parties on or before 22 August 2024.
10. The Administrators received NBIOs from parties, certain of which contemplated a sale of the shares that the Second Plaintiff (**IGEH**) holds in the Third Plaintiff (**IGPH**). In considering such proposals, the Administrators have had regard to clause 9A, regarding pre-emptive rights and clause 9B, regarding a purchase option, of the Joint Venture Agreement. These provisions are, as the Administrators understand it, enlivened in certain circumstances, which may include a transfer by IGEH of the shares it holds in IGPH. A structure diagram titled "Genuity Corporate Structure" (**Structure Diagram**) that the Administrators have obtained from the books and records of the Companies, and which depicts the Companies, appears at page 8 of Exhibit JRP-4.
11. On 28 August 2024, the Administrators wrote to CEPL, regarding the proper construction of clauses 9.1, 9A and 9B of the Joint Venture Agreement. A copy of this letter appears at pages 9 to 11 of Exhibit JRP-4.
12. On 4 September 2024, the Administrators' solicitors, White & Case, received a response from CEPL's solicitors, Clayton Utz, a copy of which appears at pages 12 to 14 of Exhibit JRP-4.
13. The Administrators seek judicial direction as to the proper construction of clauses 2.12(d), 9.1, 9A and 9B of the Joint Venture Agreement. In relation to these provisions:
 - a. the Administrators have recovered from the books and records of the Companies a copy of a letter dated 15 December 2003 that CEPL issued to IGPC in relation to clause 9B.2 of the JVA, a copy of which appears at page 15 of Exhibit JRP-4;
 - b. "Ultimate Holding Company" as it relates to IGPC is defined in the JVA as "InterGen (an exempted company incorporated in the Cayman Islands with limited liability) or any "Holding Company" of InterGen nominated for this



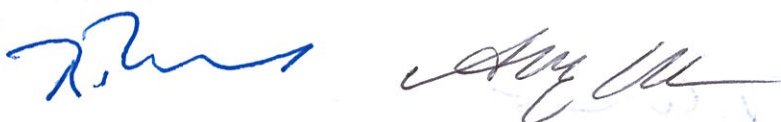
purpose by [IGPC]" (**InterGen Cayman**). Having regard to the Structure Diagram, the Administrators understand that InterGen Cayman is no longer part of the upstream corporate structure of the Group. Based on the Administrators' review of the books and records of the Companies, the Administrators are not aware that any other holding company of InterGen Cayman was nominated by IGPC pursuant to the definition of "Ultimate Holding Company" in the JVA;

- c. the Administrators caused document 7EBA69954, being a "Change to Company Details" signed on 23 September 2020, to be obtained from the records maintained by the Australian Securities and Investments Commission, a copy of which appears at pages 16 to 17 of Exhibit JRP-4. That document relevantly notes that IGPC named OzGen (UK) Limited as its ultimate holding company effective as at 26 June 2020. A current extract of the records maintained by ASIC in respect of IGPC appears at pages 18 to 42 of Exhibit JRP-4;
- d. the NBIOS received in the Sale Process do not contemplate:
 - i. an assignment of rights under the JVA (including IGPC's "Interest" or any related agreements to any holding company of IGPC);
 - ii. a sale of all or substantially all of the assets of the "Ultimate Holding Company" (whichever company the court determines satisfies this definition); or
 - iii. a public offering of shares in any of the Companies; and
- e. based upon the Administrators review of the books and records of the companies, IGEH owns the shares in IGPH, and IGPH owns the shares in IGPC. Those shares are all or substantially all of the assets of IGEH and IGPH respectively.

14. The Administrators are of the view that such directions are necessary for the Administrators to be able to appropriately consider NBIOS and progress with a transaction that is in the best interests of the creditors of the Companies.

Conclusion

15. The Administrators intend to provide notice of this application to creditors of the Second to Fifth Plaintiffs, including CEPL and ASIC.

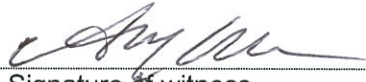


16. The Administrators consider the orders sought in the Interlocutory Process are in the best interests of the creditors of the Second to Fifth Plaintiffs and are consistent with, and will advance, the objectives of Part 5.3A of the Corporations Act.

Affirmed by the deponent
at Brisbane
in Queensland
on 6 September 2024
Before me:



Signature of deponent



Signature of witness

Name of Witness: *ASHLEIGH UBANK*
Capacity of Witness: *JP (QUAL)*
Address of Witness: *LEVEL 20, 345 QUEEN ST*
BRISBANE



SCHEDULE 1

No. QUD403 of 2024

Federal Court of Australia
District Registry: Queensland
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**IN THE MATTER OF IG POWER (CALLIDE) LIMITED (ADMINISTRATORS APPOINTED)
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